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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,562	04/08/2004	Phillip M. Braun	00216-638001	8663

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EXAMINER
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CHIN, RANDALL E

ART UNIT	PAPER NUMBER
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3723

NOTIFICATION DATE	DELIVERY MODE
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01/19/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/820,562	<b>Applicant(s)</b> BRAUN ET AL.	
	<b>Examiner</b> Randall Chin	<b>Art Unit</b> 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27,29-36,117-120 and 132-134 is/are pending in the application.
- 4a) Of the above claim(s) 20,21 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19,22-27,29-33,35,36,117-120 and 132-134 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11032010</u> .  | 6) <input type="checkbox"/> Other: _____                          |

***Reissue Application***

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 12-15, 18, 19, 22-24, 117-120 and 133 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 35 29 953 (hereinafter DE '953).

As for claim 12, DE '953 discloses in the Fig. 6 embodiment an apparatus comprising a toothbrush head 24 having a longitudinal axis, and a first group of tooth cleaning elements 19 extending from the head and a second group of a plurality of tooth cleaning elements 21 extending from the head, the elements within each of the groups being of a common type and the type of elements 19 in the first group being different from the type of elements 21 in the second group, and wherein each of the elements 19 of the first group is nonrotatable, and wherein each of the elements 21 in the second group is supported for rotation about only one axis and independently rotatable with respect to any other rotatable tooth cleaning element 21 on the toothbrush head, the elements 21 of the second group sized such that multiple elements 21, 21 of the second group are placed beside each other in a direction generally orthogonal to the longitudinal axis of the toothbrush head 24.

As for claim 13, all of the tooth cleaning elements 19, 21 of the toothbrush are in the first and second group.

As for claim 14, the first group includes a plurality of tooth cleaning elements 19 (i.e., bristles shown in Fig. 6).

As for claim 15, each of the elements 21 in the second group is adjacent to at least one of the elements 19 in the first group.

As for claim 18, the elements 21 in the second group are deemed made of polymer.

As for claim 19, each of the elements 21 in the second group is deemed a fin.

As for claim 22, there is also a handle, and wherein the head extends from the handle (Fig. 1).

As for claim 23, the axis about which each element 21 in the second group is rotatable is substantially perpendicular to "a long axis" (not positively recited) of the element.

As for claim 24, the elements 19 in the first group are free of spring bias tending to rotate the elements after deflection.

As for claim 117, the type of elements 19 in the first group is structurally different from the type of elements 21 in the second group.

As for claim 118, the type of elements 19 in the first group is compositionally different from the type of elements 21 in the second group.

As for claim 119, the type of elements 19 in the first group is structurally and compositionally different from the type of elements 21 in the second group.

As for claim 120, the elements 19 in the first group are deemed rigidly secured (at least to an extent) to the toothbrush head.

As for claim 133, two or more of elements 21 of the second group are disposed in a row extending generally laterally across a long axis of the toothbrush head 24.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE '953.

As for claim 16 reciting that the interproximal residence time of elements in the second group is about 1.6 times or greater than the interproximal residence time of the elements in the first group, it would have been obvious to one of ordinary skill to have provided the interproximal residence time of elements in the second group being about 1.6 times or greater (if not already) than the interproximal residence time of the elements in the first group through an optimization process to ensure adequate cleaning of interproximal spaces in the oral cavity.

As for claim 17 reciting that the elements in the second group are longer than the elements in the first group, it would have been obvious to one of ordinary skill in the art

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to have provided for such arrangement depending on the particular cleaning application at hand and effective cleaning results desired.

***Oath/Declaration***

5. In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Claims 1-19, 22-27, 29-33, 35, 36, 117-120 and 132-134 are rejected as being based upon a defective reissue oath under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

See MPEP § 1414.01.

***Allowable Subject Matter***

6. Claims 1-11, 25-27, 29-33, 35, 36, 132 and 134 are allowable pending receipt of a supplemental reissue oath/declaration as set forth in this Office action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Chin whose telephone number is (571) 272-

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1270. The examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Randall Chin/  
Primary Examiner, Art Unit 3723